

AMENDED IN ASSEMBLY JUNE 3, 2003
AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1315

Introduced by Assembly Member Parra

February 21, 2003

An act to amend Section 12021 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1315, as amended, Parra. Firearms: prohibitions: juvenile offenders.

Existing law prohibits juveniles convicted of specified offenses from owning, possessing, or having under their custody or control, any firearm until the age of 30 years. Violation of these provisions is a crime.

This bill would instead provide that the prohibition is until the age of 30 years, or 10 years from release from custody or control of the juvenile court for commission of a specified offense, whichever date is later. *The bill would also require the juvenile court to report the date of release to the Department of Justice.*

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12021 of the Penal Code is amended to
2 read:

3 12021. (a) (1) Any person who has been convicted of a
4 felony under the laws of the United States, of the State of
5 California, or any other state, government, or country, or of an
6 offense enumerated in subdivision (a), (b), or (d) of Section
7 12001.6, or who is addicted to the use of any narcotic drug, who
8 owns or has in his or her possession or under his or her custody or
9 control any firearm is guilty of a felony.

10 (2) Any person who has two or more convictions for violating
11 paragraph (2) of subdivision (a) of Section 417 and who owns or
12 has in his or her possession or under his or her custody or control
13 any firearm is guilty of a felony.

14 (b) Notwithstanding subdivision (a), any person who has been
15 convicted of a felony or of an offense enumerated in Section
16 12001.6, when that conviction results from certification by the
17 juvenile court for prosecution as an adult in an adult court under
18 Section 707 of the Welfare and Institutions Code, who owns or has
19 in his or her possession or under his or her custody or control any
20 firearm is guilty of a felony.

21 (c) (1) Except as provided in subdivision (a) or paragraph (2)
22 of this subdivision, any person who has been convicted of a
23 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
24 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,
25 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5,
26 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or
27 12024, subdivision (b) or (d) of Section 12034, Section 12040,
28 subdivision (b) of Section 12072, subdivision (a) of former
29 Section 12100, Section 12220, 12320, or 12590, or Section 8100,
30 8101, or 8103 of the Welfare and Institutions Code, any
31 firearm-related offense pursuant to Sections 871.5 and 1001.5 of
32 the Welfare and Institutions Code, or of the conduct punished in
33 paragraph (3) of subdivision (g) of Section 12072, and who, within



1 10 years of the conviction, owns, or has in his or her possession or
2 under his or her custody or control, any firearm is guilty of a public
3 offense, which shall be punishable by imprisonment in a county
4 jail not exceeding one year or in the state prison, by a fine not
5 exceeding one thousand dollars (\$1,000), or by both that
6 imprisonment and fine. The court, on forms prescribed by the
7 Department of Justice, shall notify the department of persons
8 subject to this subdivision. However, the prohibition in this
9 paragraph may be reduced, eliminated, or conditioned as provided
10 in paragraph (2) or (3).

11 (2) Any person employed as a peace officer described in
12 Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose
13 employment or livelihood is dependent on the ability to legally
14 possess a firearm, who is subject to the prohibition imposed by this
15 subdivision because of a conviction under Section 273.5, 273.6, or
16 646.9, may petition the court only once for relief from this
17 prohibition. The petition shall be filed with the court in which the
18 petitioner was sentenced. If possible, the matter shall be heard
19 before the same judge that sentenced the petitioner. Upon filing the
20 petition, the clerk of the court shall set the hearing date and shall
21 notify the petitioner and the prosecuting attorney of the date of the
22 hearing. Upon making each of the following findings, the court
23 may reduce or eliminate the prohibition, impose conditions on
24 reduction or elimination of the prohibition, or otherwise grant
25 relief from the prohibition as the court deems appropriate:

26 (A) Finds by a preponderance of the evidence that the
27 petitioner is likely to use a firearm in a safe and lawful manner.

28 (B) Finds that the petitioner is not within a prohibited class as
29 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
30 and the court is not presented with any credible evidence that the
31 petitioner is a person described in Section 8100 or 8103 of the
32 Welfare and Institutions Code.

33 (C) Finds that the petitioner does not have a previous
34 conviction under this subdivision no matter when the prior
35 conviction occurred.

36 In making its decision, the court shall consider the petitioner's
37 continued employment, the interest of justice, any relevant
38 evidence, and the totality of the circumstances. The court shall
39 require, as a condition of granting relief from the prohibition under
40 this section, that the petitioner agree to participate in counseling

1 as deemed appropriate by the court. Relief from the prohibition
2 shall not relieve any other person or entity from any liability that
3 might otherwise be imposed. It is the intent of the Legislature that
4 courts exercise broad discretion in fashioning appropriate relief
5 under this paragraph in cases in which relief is warranted.
6 However, nothing in this paragraph shall be construed to require
7 courts to grant relief to any particular petitioner. It is the intent of
8 the Legislature to permit persons who were convicted of an offense
9 specified in Section 273.5, 273.6, or 646.9 to seek relief from the
10 prohibition imposed by this subdivision.

11 (3) Any person who is subject to the prohibition imposed by
12 this subdivision because of a conviction of an offense prior to that
13 offense being added to paragraph (1) may petition the court only
14 once for relief from this prohibition. The petition shall be filed
15 with the court in which the petitioner was sentenced. If possible,
16 the matter shall be heard before the same judge that sentenced the
17 petitioner. Upon filing the petition, the clerk of the court shall set
18 the hearing date and notify the petitioner and the prosecuting
19 attorney of the date of the hearing. Upon making each of the
20 following findings, the court may reduce or eliminate the
21 prohibition, impose conditions on reduction or elimination of the
22 prohibition, or otherwise grant relief from the prohibition as the
23 court deems appropriate:

24 (A) Finds by a preponderance of the evidence that the
25 petitioner is likely to use a firearm in a safe and lawful manner.

26 (B) Finds that the petitioner is not within a prohibited class as
27 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
28 and the court is not presented with any credible evidence that the
29 petitioner is a person described in Section 8100 or 8103 of the
30 Welfare and Institutions Code.

31 (C) Finds that the petitioner does not have a previous
32 conviction under this subdivision, no matter when the prior
33 conviction occurred.

34 In making its decision, the court may consider the interest of
35 justice, any relevant evidence, and the totality of the
36 circumstances. It is the intent of the Legislature that courts exercise
37 broad discretion in fashioning appropriate relief under this
38 paragraph in cases in which relief is warranted. However, nothing
39 in this paragraph shall be construed to require courts to grant relief
40 to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of

1 Section 1203.073, or any offense enumerated in paragraph (1) of
2 subdivision (c) shall not own, or have in his or her possession or
3 under his or her custody or control, any firearm until the age of 30
4 years, or 10 years from release from custody or control of the
5 juvenile court for commission of an offense enumerated in this
6 subdivision, whichever date is later. A violation of this subdivision
7 shall be punishable by imprisonment in a county jail not exceeding
8 one year or in the state prison, by a fine not exceeding one thousand
9 dollars (\$1,000), or by both that imprisonment and fine. The
10 juvenile court, on forms prescribed by the Department of Justice,
11 shall notify the department of persons subject to this subdivision.
12 *The juvenile court, on forms prescribed by the Department of*
13 *Justice, shall report to the department, the date of release from the*
14 *jurisdiction of the juvenile court for those persons subject to this*
15 *subdivision.* Notwithstanding any other law, the forms required to
16 be submitted to the department pursuant to this subdivision may
17 be used to determine eligibility to acquire a firearm.

18 (f) Subdivision (a) shall not apply to a person who has been
19 convicted of a felony under the laws of the United States unless
20 either of the following criteria is satisfied:

21 (1) Conviction of a like offense under California law can only
22 result in imposition of felony punishment.

23 (2) The defendant was sentenced to a federal correctional
24 facility for more than 30 days, or received a fine of more than one
25 thousand dollars (\$1,000), or received both punishments.

26 (g) (1) Every person who purchases or receives, or attempts to
27 purchase or receive, a firearm knowing that he or she is subject to
28 a protective order as defined in Section 6218 of the Family Code,
29 Section 136.2, or a temporary restraining order or injunction
30 issued pursuant to Section 527.6 or 527.8 of the Code of Civil
31 Procedure, is guilty of a public offense, which shall be punishable
32 by imprisonment in a county jail not exceeding one year or in the
33 state prison, by a fine not exceeding one thousand dollars (\$1,000),
34 or by both that imprisonment and fine. This subdivision does not
35 apply unless the copy of the restraining order personally served on
36 the person against whom the restraining order is issued contains a
37 notice in bold print stating (1) that the person is prohibited from
38 purchasing or receiving or attempting to purchase or receive a
39 firearm and (2) specifying the penalties for violating this
40 subdivision, or a court has provided actual verbal notice of the

1 firearm prohibition and penalty as provided in Section 6304 of the
2 Family Code.

3 (2) Every person who owns or possesses a firearm knowing that
4 he or she is prohibited from owning or possessing a firearm by the
5 provisions of a protective order as defined in Section 6218 of the
6 Family Code, Section 136.2 of the Penal Code, or a temporary
7 restraining order or injunction issued pursuant to Section 527.6 or
8 527.8 of the Code of Civil Procedure, is guilty of a public offense,
9 which shall be punishable by imprisonment in a county jail not
10 exceeding one year, by a fine not exceeding one thousand dollars
11 (\$1,000), or by both that imprisonment and fine. This subdivision
12 does not apply unless a copy of the restraining order personally
13 served on the person against whom the restraining order is issued
14 contains a notice in bold print stating (1) that the person is
15 prohibited from owning or possessing or attempting to own or
16 possess a firearm and (2) specifying the penalties for violating this
17 subdivision, or a court has provided actual verbal notice of the
18 firearm prohibition and penalty as provided in Section 6304 of the
19 Family Code.

20 (3) Judicial Council shall provide notice on all protective
21 orders that the respondent is prohibited from owning, possessing,
22 purchasing, or receiving a firearm while the protective order is in
23 effect and that the firearm shall be relinquished to the local law
24 enforcement agency for that jurisdiction or sold to a licensed gun
25 dealer, and that proof of surrender or sale shall be filed within a
26 specified time of receipt of the order. The order shall also state on
27 its face the expiration date for relinquishment.

28 (4) If probation is granted upon conviction of a violation of this
29 subdivision, the court shall impose probation consistent with the
30 provisions of Section 1203.097.

31 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
32 justifiable where all of the following conditions are met:

33 (A) The person found the firearm or took the firearm from a
34 person who was committing a crime against him or her.

35 (B) The person possessed the firearm no longer than was
36 necessary to deliver or transport the firearm to a law enforcement
37 agency for that agency's disposition according to law.

38 (C) If the firearm was transported to a law enforcement agency,
39 it was transported in accordance with paragraph (18) of
40 subdivision (a) of Section 12026.2.

1 (D) If the firearm is being transported to a law enforcement
2 agency, the person transporting the firearm has given prior notice
3 to the law enforcement agency that he or she is transporting the
4 firearm to the law enforcement agency for disposition according
5 to law.

6 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
7 (e), the trier of fact shall determine whether the defendant was
8 acting within the provisions of the exemption created by this
9 subdivision.

10 (3) The defendant has the burden of proving by a
11 preponderance of the evidence that he or she comes within the
12 provisions of the exemption created by this subdivision.

13 (i) Subject to available funding, the Attorney General, working
14 with the State Judicial Council, the California Alliance Against
15 Domestic Violence, prosecutors, and law enforcement, probation,
16 and parole officers, shall develop a protocol for the
17 implementation of the provisions of this section. The protocol
18 shall be designed to facilitate the enforcement of restrictions on
19 firearm ownership, including provisions for giving notice to
20 defendants who are restricted, provisions for informing those
21 defendants of the procedures by which defendants shall dispose of
22 firearms when required to do so, provisions explaining how
23 defendants shall provide proof of the lawful disposition of
24 firearms, and provisions explaining how defendants may obtain
25 possession of seized firearms when legally permitted to do so
26 pursuant to this section or any other provision of law. The protocol
27 shall be completed on or before January 1, 2005.

28 SEC. 2. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

